

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:21-CR-272-MTS
DAVID BARKLAGE,)	
)	
Defendant.)	
)	

GUILTY PLEA AGREEMENT

Come now the parties and hereby agree, as follows:

1. PARTIES:

The parties are the defendant, David Barklage, represented by defense counsel, Joseph Passanise and Dee Wampler, and the United States of America (hereinafter "United States" or "Government"), represented by Assistant United States Attorney Hal Goldsmith and the Office of the United States Attorney for the Eastern District of Missouri. This agreement does not, and is not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri. The Court is neither a party to nor bound by this agreement.

2. GUILTY PLEA:

Pursuant to Rule 11(c)(1)(A), of the Federal Rules of Criminal Procedure, in exchange for the Defendant's voluntary plea of guilty to Count One, the United States agrees that no further federal prosecution will be brought in this District relative to Defendant's violations of federal law, known to the United States at this time, arising out of the events set forth in the Indictment.

3. THE SENTENCE:

The parties agree that the recommendations contained herein fairly and accurately set forth some guidelines that may be applicable to this case. The parties agree that the U.S. Sentencing Guidelines Total Offense Level analysis agreed to by the parties herein is the result of negotiation and led, in part, to the guilty plea. The parties further agree that either party may request a sentence above or below the U.S. Sentencing Guidelines range (combination of Total Offense Level and Criminal History Category) ultimately determined by the Court pursuant to any chapter of the Guidelines, Title 18, United States Code, Section 3553(a). The parties further agree that notice of any such request will be given no later than ten days prior to sentencing and that said notice shall specify the legal and factual bases for the request.

4. THE ELEMENTS

As to Count One, the defendant admits to knowingly violating Title 26, United States Code, Section 7206(1) and admits there is a factual basis for the plea to the charge and further fully understands that the elements of the crime are:

1. The defendant made and subscribed a tax return, statement, or other document which was false as to a material matter;
2. The tax return, statement, or other document contained a written declaration that it was made under the penalties of perjury;
3. The defendant did not believe the tax return, statement, or other document to be true and correct as to every material matter; and
4. The defendant falsely subscribed to the tax return, statement, or other document willfully, with the specific intent to violate the law.

5. FACTS:

The parties agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt if the case were to go to trial. These facts may be considered as relevant conduct pursuant to Section 1B1.3:

The defendant, **DAVID BARKLAGE** (hereinafter referred to as “**BARKLAGE**”), was a political campaign manager, consultant, and lobbyist who owned, operated, or was otherwise associated with Barklage and Knodell, a partnership owned 50% by **BARKLAGE**, and The Barklage Company, a corporation owned 100% by **BARKLAGE**.

During 2012-14, **BARKLAGE** had several sources of income, but he did not report a substantial portion of his income on his individual income tax returns. Specifically, **BARKLAGE** had three main sources of unreported income. First, **BARKLAGE** received \$111,500, \$64,464, and \$33,535 from a political campaign in the State of Missouri during the tax years 2012, 2013, and 2014, respectively. Second, **BARKLAGE** received \$30,000 in lobbying fees that he earned from a company during tax year 2013. Third, **BARKLAGE** earned \$122,580 from an independent media producer, during tax year 2012. **BARKLAGE** deposited all of these funds into his personal bank account, instead of his business bank accounts. **BARKLAGE** then willfully failed to disclose these funds or turn over his personal bank account information and statements to his tax return preparer. Thus, these funds and earnings were not included on **BARKLAGE**'s form 1040 tax returns for the years 2012, 2013, and 2014. At the time, **BARKLAGE** knew that these funds were reportable income for tax purposes, knew that he should provide this earnings information to his tax preparer, and knew that his tax returns would, therefore, be false and would be transmitted to the Internal Revenue Service.

By failing to provide this earnings information to his tax preparer, **BARKLAGE** caused the creation, issuance, and filing of false personal form 1040 tax returns and a substantial under-reporting of his income on those personal form 1040 tax returns. **BARKLAGE** failed to report a total of \$443,633.00 in income for the tax years 2012-14. As a result of his under-reporting of his income, **BARKLAGE** owes \$151,843 in taxes for the 2012-14 tax years.

On or about April 15, 2015, in the Eastern District of Missouri, **DAVID BARKLAGE** did willfully make and subscribe his 2014 individual income tax return, which contained or was verified by a written declaration that it was made under the penalties of perjury, and which **DAVID BARKLAGE** did not believe to be true and correct as to every material matter.

6. STATUTORY PENALTIES:

The defendant fully understands that the maximum possible penalty provided by law for the criminal offense to which the defendant is pleading guilty is imprisonment of not more than 3 years, a fine of not more than \$100,000.00, or both such imprisonment and fine, and a period of supervised release of not more than 1 year, together with the costs of prosecution.

7. U.S. SENTENCING GUIDELINES: 2018 MANUAL:

The defendant understands that this offense is affected by the U.S. Sentencing Guidelines and the actual sentencing range is determined by both the Total Offense Level and the Criminal History Category. The parties agree that the following are the applicable U.S. Sentencing Guidelines Total Offense Level provisions.

a. Chapter 2 Offense Conduct:

(1) **Base Offense Level:** The parties agree that the base offense level is 16 as found in Sections 2T1.1(a)(1) and 2T4.1(F) since the tax loss resulting from defendant's conduct was greater than \$100,000 and less than \$250,000.00.

(2) **Specific Offense Characteristics:** None.

b. **Chapter 3 Adjustments:**

Acceptance of Responsibility: The parties agree that if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level because the defendant has clearly demonstrated acceptance of responsibility and timely notified the government of the defendant's intention to plead guilty. The parties agree that the defendant's eligibility for this deduction is based upon information presently known. If subsequent to the taking of the guilty plea the government receives new evidence of statements or conduct by the defendant which it believes are inconsistent with defendant's eligibility for this deduction, the government may present said evidence to the court, and argue that the defendant should not receive all or part of the deduction pursuant to Section 3E1.1, without violating the plea agreement.

c. **Estimated Total Offense Level:** The parties estimate that the Total Offense Level is 13.

d. **Criminal History:** The determination of the defendant's Criminal History Category shall be left to the Court. Either party may challenge, before and at sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category. The defendant's criminal history is known to the defendant and is substantially available in the Pretrial Services Report.

e. **Effect of Parties' U.S. Sentencing Guidelines Analysis:** The parties agree that the Court is not bound by the Guidelines analysis agreed to herein. The parties may not have foreseen all applicable Guidelines. The Court may, in its discretion, apply or not apply any Guideline despite the agreement herein and the parties shall not be permitted to withdraw from the plea agreement.

8. WAIVER OF APPEAL AND POST-CONVICTION RIGHTS:

a. **Appeal:** The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742.

(1) **Non-Sentencing Issues:** The parties waive all rights to appeal all non-jurisdictional, non-sentencing issues, including, but not limited to, any issues relating to pretrial motions, discovery, the guilty plea, the constitutionality of the statutes to which defendant is pleading guilty and whether defendant's conduct falls within the scope of the statutes.

(2) **Sentencing Issues:** In the event the Court accepts the plea, accepts the U.S. Sentencing Guidelines Total Offense Level agreed to herein, and, after determining a Sentencing Guidelines range, sentences the defendant within or below that range, then, as part of this agreement, the defendant hereby waives all rights to appeal all sentencing issues other than Criminal History, but only if it affects the Base Offense Level or Criminal History Category. Similarly, the Government hereby waives all rights to appeal all sentencing issues other than Criminal History, provided the Court accepts the plea and the agreed Total Offense Level and sentences the defendant within or above that range.

b. **Habeas Corpus:** The defendant agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States

Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.

c. **Right to Records**: The defendant waives all rights, whether asserted directly or by a representative, to request from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 522, or the Privacy Act, Title 5, United States Code, Section 552(a).

9. **OTHER**:

a. **Disclosures Required by the United States Probation Office**: The defendant agrees to truthfully complete and sign forms as required by the United States Probation Office prior to sentencing and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government.

b. **Civil or Administrative Actions not Barred; Effect on Other Governmental Agencies**: Nothing contained herein limits the rights and authority of the United States to take any civil, tax, immigration/deportation or administrative action against the defendant.

c. **Supervised Release**: Pursuant to any supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions related to the crime defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. Violation of the conditions of supervised release resulting in revocation may require the defendant to serve a term of imprisonment equal to the length of the term of supervised release, but not greater than the term set forth in Title 18, United States Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished

d. **Mandatory Special Assessment:** Pursuant to Title 18, United States Code, Section 3013, the Court is required to impose a mandatory special assessment of \$100.00 per count for a total of \$100.00, which the defendant agrees to pay at the time of sentencing. Money paid by the defendant toward any restitution or fine imposed by the Court shall be first used to pay any unpaid mandatory special assessment.

e. **Possibility of Detention:** The defendant may be subject to immediate detention pursuant to the provisions of Title 18, United States Code, Section 3143.

f. **Fines, Restitution and Costs of Incarceration and Supervision:** The Court may order restitution as a condition of supervised release in this case. The Court may also impose a fine (in addition to any penalty authorized by law), costs of incarceration and costs of supervision. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately.

g. **Forfeiture:** The defendant agrees to forfeit all of the defendant's interest in all items seized by law enforcement officials during the course of their investigation. The defendant admits that all the United States currency, weapons, property, and assets seized by law enforcement officials during their investigation constitute the proceeds of the defendant's illegal activity, were commingled with illegal proceeds, or were used to facilitate illegal activity. The defendant agrees to execute any document and take all steps needed to transfer title or ownership of said items to the government and to rebut claims of nominees and/or alleged third party owners. The defendant further agrees that said items may be disposed of by law enforcement officials in any manner.

10. ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:

In pleading guilty, the defendant acknowledges, fully understands and hereby waives his rights, including but not limited to: the right to plead not guilty to the charges; the right to be tried

by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress or exclude evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the elements of the offenses against the defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

11. VOLUNTARY NATURE OF THE GUILTY PLEA AND PLEA AGREEMENT:

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in

this case. In addition, the defendant states that no person has, directly or indirectly, threatened or coerced the defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

The defendant acknowledges having voluntarily entered into both the plea agreement and the guilty plea. The defendant further acknowledges that this guilty plea is made of the defendant's own free will and that the defendant is, in fact, guilty.

12. CONSEQUENCES OF POST-PLEA MISCONDUCT:


After pleading guilty and before sentencing, if defendant commits any crime, other than minor traffic offenses, violates any condition of release that results in revocation, violates any term of this guilty plea agreement, intentionally provides misleading, incomplete or untruthful information to the U.S. Probation Office or fails to appear for sentencing, the United States, at its option, may be released from its obligations under this agreement. The Government may also, in its discretion, proceed with this agreement and may advocate for any sentencing position supported by the facts, including but not limited to obstruction of justice and denial of acceptance of responsibility.

13. NO RIGHT TO WITHDRAW GUILTY PLEA:

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, the defendant understands that there will be no right to withdraw the plea entered under this agreement, except

where the Court rejects those portions of the plea agreement which deal with charges the government agrees to dismiss or not to bring.

August 25, 2021
Date




HAL GOLDSMITH.
Assistant United States Attorney

AUGUST 25, 2021
Date



DAVID BARKLAGE
Defendant

8/25/21
Date



JOSEPH PASSANISE
Attorney for Defendant